

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CARL GEE,

Plaintiff,

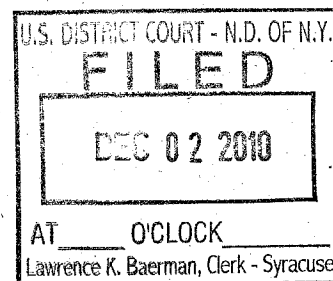
Vs,

BRIAN FISCHER,
KENNETH S. PERLMAN,

Defendants.

INMATE
CIVIL RIGHTS
COMPLAINT PURSUANT
TO 42 USC 1983

Case No. 9: 10 CV 1448



Plaintiff demands a trial by Jury

Plaintiff in the above-captioned action, alleges as follows:

JURISDICTION

1. This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 USC 1983. The Court has jurisdiction over this action pursuant to 28 USC sections 1331, 1343(3) and 4 and 2201.

PARTIES

2. Plaintiff: CARL GEE 98B1658
Clinton CF
PO Box 2000
Dannemora, NY 12929

3. a. Defendant: BRIAN Fischer
Commissioner of Corrections
The Harriman State Campus-Bldg #2
1220 Washington Avenue
Albany, NY 12226-2050

b. Defendant: Kenneth S. Perlman
Deputy Commissioner of Program Services
The Harriman State Campus-Bldg #2
Albany, NY 12226-2050

4. Place of confinement

Plaintiff filed a grievance that was denied both, at the grievance hearing and upon an administrative appeal. Plaintiff also filed a formal complaint to defendants Fischer and Perlman that was denied.

5. Previous Lawsuits

Plaintiff filed a lawsuit on October 16, 2009 before Judge Gary L. Sharpe in the Northern District against Brian Fischer, Mark Bradt, Steven Wenderlich, William Hopkins, Norman Bezio, Lt. Willis, P. Gonyea, Corcoran, Lucien LeClaire, and R. Raymond entitled Gee v. Fischer et al, Civil Docket No. 9:09-cv-01057. That case is currently pending.

6. Facts

The Department of Correctional Services (DOCS) has established Sunni Islam as the official doctrine of Islam and denied Shi'i Muslims a chance to practice their Islam faith. U.S. Const. 1st and 14th amendments.

7. In order to familiarize this Court with the nature of plaintiff's contention, he has presented the historical background of both, the Shi'i and Sunni beliefs to show not merely the differences in practices, but to demonstrate that ~~not~~ why the two beliefs must be separated in practice and how DOCS has violated the plaintiff's rights.

8. Historical Background

Many Muslim chaplains in DOCS were recruited by Warith Deen Umar who, under Saudi patronage, introduced Saudi ideology in the prisons. An article published in the February 5, 2003, issue of the Wall Street Journal states that Umar, who studied in Saudi Arabia at the government's expense, sees

the 9/11 hijackers as martyrs. Umar who followed Louis Farrakhan at one point, has been preaching Wahhabism in prisons for more than twenty years. Wahhabism, Salafis, Ash'arites, and Mu'tazillites are different names for the Islamic sect known as Sunni Muslims.

9. Saudi Arabia is a theocratic state where all variant expressions of Islam and non-Muslims are precluded from the public square. Threatened by the Iranian revolution and its regime as Shi'i, the Saudi, who espouse Wahhabi ideology, felt a need to respond to the purported Shi'i threat. They did this by disseminating Wahhabism in different parts of the world.

10. The Wahhabis base their ideology on the views of the fourteenth century scholar Ibn Taymiyya. He saw the Shi'i as the enemy within, guilty of corrupting Islam. Shi'ism, he believed, was a heretical movement that had to be combated, violently, if necessary. In his *Minhaj al-Sunna al-Nabawiyya Fi Naqd Kalam al-Shi'a al-Qadariyya* (The Way of the Prophetic Traditions in the Critique of the

theology of the Qadari Shi'ism), Ibn Taymiyya refuted key Shi'i beliefs and practices. He argued against the Shi'i belief in the divinely appointed Imam, maintaining that there was no basis for such a view either in the Holy Qur'an or the Prophetic traditions. Ibn Taymiyya also attacked the Shi'i belief in the esoteric interpretation of revealed sources.

11. Ibn Taymiyya's arguments and works are important because they have been appropriated by the Wahhabis to discredit Shi'ism in present times in general, and in particular in DOCS, as the established official doctrine of Islam by the defendants.

12. The Wahhabis fully appropriated Ibn Taymiyya's arguments to vindicate their vitriolic attacks against the Shi'is. The chief Wahhabi ulama (scholar), led by the chief state cleric, Abd al-Aziz Ibn Baz (d. 1999) issued proclamations stating that Shi'is were infidels and prohibited Muslims from dealing with them. In December 2006, a top Saudi

Arabian Sunni cleric declared Shi'is to be infedels who should be considered worse than Jews and Christians. Abd al-Rahman al-Barak, one of the top several Wahhabi clerics in Saudi Arabia and considered close to that Kingdom's Royal Family, also argued and urged Sunni Worldwide to oppose reconciliation with Shi'is.

13. An important movement is the Salafi; a term that means "predecessor" and is most often associated with followers of the pious ancestors. The movement was founded in the late nineteenth century by muslim reformers including Muhammad Abduh (d. 1905), Jamal al-Din al-Afghani (d. 1897), Muhammad Rashid Rida (d. 1935) and others. Although these early Salafi leaders advocated for a return to the revealed text, they were not considered anti-intellectual and were even criticized for being progressive.

14. In the contemporary context, the term Salafiyya has come to connote a return to pristine Islam and to an understanding of faith as exemplified by the early generation of Muslims, i.e.,

the period of the Prophet, his companions, and their successors (see Takim, Liya Kat Nathan, "Shi'ism in America").

15. Shi'i-Sunni dynamics in the prison system have to be contextualized within the framework of the history of the early Muslim community, which, as we shall see, comprised both groups. Faced with the challenge of the opposing views of these Islamic sects, which is rooted in the right of succession after the Prophet of Islam, there has developed distinctive religious practices that is established by the defendants on one hand for the Sunni Muslims, and is ignored on the other hand for Shi'is by the defendants. ... the tendency and the readiness of most of the Orientalists, to accept, at face value, many of the false statements and spurious claims which were put into circulation, long ago, by the historians who were on the "payroll" of the governments of Saggiyah. There is, for example, a consensus among them that Muhammad Mustafa, the Messenger of God, did not appoint his own successor nor did he tell the Muslims how they ought to select their leaders for the government which he had founded; and he died leaving everything,

apparently, to their resources and discretion. For instance;

11 Muhammad died at Medina on June 8, 632, without leaving any instructions for the future government of the Muslim Community."

16. This statement occurs in the article captioned Caliphate, in page 643, Volume 4, 14th edition (1973) of the Encyclopedia Britannica. It is a patent piece of propaganda but the Encyclopedia Britannica, the great disseminator of knowledge, has swallowed the line. It is the most divisive historical canard in Islam, but surprisingly, it goes unchallenged, century after century (see Sayed Ali Asgher Razwy, "A Restatement of the History of Islam and Muslims", 1997, page 306).

17. Definitions:

a) Ibn - son. b) Ansar - helper, literally the people of Medina where the Holy Prophet migrated. c) Muhajereen, Muhajirin - immigrant, literally the people of Mecca who migrated with the Holy Prophet to Medina. d) Iman, Imamate, Imameh, literally means The Leadership; Al-Imam, means The Leader. In Islamic terminology Al-Imameh means universal authority in all religious and secular affairs over the muslim community, in succession to the Holy Prophet. e) Al-Khilafet

Caliphate, Caliph, Al-Kheleefe~~h~~^h - means successor. In Islamic terminology these words practically signify the same meaning as Imam. f) Bay 'ah, means an oath of allegiance.

18. The question of Imamate and Caliphate has torn the Muslim Community apart and has affected the thinking and philosophy of the different groups so tremendously that even the belief in Allah and the Prophet could not be safe from this divergence of views. It may be of help to mention here that regarding this question, the Muslims are divided into two sects:

- a) The Shi'is who believe that Ali Ibn Abi Talib was the first Imam and Caliph.
- b) The Sunnis who believe that Abu Bakr was the first Caliph of the Holy Prophet.

19. The basic differences of these two groups stem from the system of Islamic Leadership and each group's respective understanding thereof. The Sunni scholars are never tired of asserting in hundreds and thousands of articles, books and treatises, that the Islamic system of government is based upon democracy. They even go so far as to claim that democracy was established by Islam, forgetting the city-republics of Greece. In the second half of this century, Socialism and Communism had gained hold of the underdeveloped and developing countries, and many well-meaning Muslim scholars tirelessly asserted that Islam teaches and creates socialism. Some people in Pakistan and elsewhere have invented the slogan of "Islamic Socialism". Thus, it's important to understand the system of Islamic leadership to appreciate the basic differences between the two groups, in order to understand why defendants Fischer and Perlman's establishment of Sunni Islam as the official doctrine of Islam violates the plaintiff's right to a reasonable opportunity to exercise his religious belief.

20. Let us briefly examine the system of Islamic leadership. Is it democratic? The best definition of democracy was given by Abraham Lincoln (the 16th US president, 1861-65) when he said that democracy was

"The government of the People, by the People and for the people".

21. But in Islam it is not the government "of the people"; it is the "government of Allah". How do people govern themselves by making their own laws; in Islam laws are made not by the people, but by Allah; these laws are promulgated not by the consent and decree of the people, but by the Prophet, by the command of Allah. The people have no say in legislation; they are required to follow, not to make any comment or suggestion about those laws and legislations:

"And it is not for a believer, man or woman when Allah and His Messenger have decreed a matter to have the choice in the affair"

(See Holy Qur'an 33:36).

22. Therefore, Islam is neither the government of the people nor by the people. There is absolutely no legislation by the people; and the executive and judiciary is not responsible to the people, nor is it, for that matter, a government "for the people".

23. The Islamic system, from the beginning to the end, is 'for Allah'. Everything must be done 'for Allah'; if it is done 'for the people', it is termed hidden polytheism. Whatever you do - whether

It is prayer or charity, social service of family function, obedience to parents or love of neighbour, leading in prayer or deciding a case, entering into war or concluding a peace - must be done as an approach to Allah, to gain the pleasure of Allah. In Islam, everything is for Allah.

24. Briefly, the Islamic form of government is the government of Allah, by the representative of Allah, to gain the pleasure of Allah.

"And I have not created jinn and mankind except to serve Me" (51:56).

25. It is theocracy, and it is the nature and characteristic of Islamic leadership, and how it affects the meaning of the above verse concerning obedience shall be seen infra.

26. Shi'ism: What is it and why it is so called? Shi'ism is another name for the Original Qur'anic Faith. In short, it is nothing more nor less than the Islam-Original, so those who follow Ali - the cousin of the Holy Prophet - after the Holy Prophet called themselves Shi'is of Ali and the Islam-Original became identified as Shi'ism. This was quite in

accordance with the Bait, or allegiance to Ali, required by the Holy Prophet.

27. From the Shi'i point of view, the institution of Imamate is necessary, according to reason. It is the grace (Ar. Iuft) of Allah which brings the creature towards obedience and keeps them away from disobedience, without compelling, in any way. It has been proven in the Shi'i theology that the Iuft is incumbent on Allah. When Allah command a man to do something yet is aware that man cannot do it or that it is very difficult without His assistance. Then, if Allah does not provide His assistance, He would be contradicting His own aim. Obviously, such allegation or negligence is evil according to reason. Therefore, the Iuft is incumbent on Allah.

Imamate is a Iuft because as we know when men have a chief and guide whom they obey, who avenges the oppressed of their oppressor and restrains the oppressor, then they draw nearer to righteousness and depart from corruption, and because it is a Iuft, it is incumbent on Allah to appoint an Imam to guide and lead the community after the Holy Prophet.

28. It is for this reason, amongst others, that the

Shi'i Ithna Ashariyyah (or The Twelvers) believe that only Allah can appoint a successor to the Prophet; that the Muslim community has no choice in this matter - its only duty is to follow such a divinely appointed Imam or Caliph.

29. The Sunnis, on the other hand, believe that it is the duty of the Muslim community to appoint a Caliph. The following verses of the Holy Qur'an confirm the views held by the Shi'i;

"And the Lord creates what soever He will and the choices; they have not the choice; Glory be to Allah! High be He Exalted above that they associate with Him". (28:68).

30. This clearly shows that man has no right to make any selection; it lies entirely in the hands of Allah. The history of all the prophets does not offer a single instance of a prophet's successor being elected by a voting of his followers. There is no reason why in the case of the successor of the last prophet this established Divine Law should be changed. Allah says; "And you shall never find a change in divine practice". (33:62).

31. Thus, the Shi'i believes that, every muslim, as ordained by the following ordinances from Allah, must accept the verdict of the Holy Prophet (which is essentially the verdict of his successor ordained by him) without reluctance and with implicit submission:

So No! By thy Lord! They believe not until they have set thee (Muhammad) up as their judge in all that they dispute about among themselves and thereafter find not in their selves any vexation (at all) against what thou decideth and submit (themselves) with total submission (4:65).

O you who believe, obey Allah and obey the Messenger (the Holy Prophet) and those charged with authority among you; then if you disput about a thing, refer to Allah and Apostle, if you believe in Allah and the Last Day; that is better and very good in the end (4:59).

32. This verse obliges the Muslims to two obedience: First, the obedience of Allah; second, the obedience of the Holy Prophet and "those charged with authority from you". Many Sunni Muslims tend to interpret "those charged with

authority from you", i.e. Muslim rulers. However, looking especially at the Holy Prophet of Islam, Allah tell us "...and whatever the Apostle give you, take it; and from whatever he forbids you, keep back". (59:7).

33. Particularly concerning who "those charged with authority" are, one must remember the verdict of the Holy Prophet. In Kifayetul Aathar, there is a tradition or saying from a notable companion of the Holy Prophet by Jabir Ibn Abdillah Al-Ansari, in explanation of this verse. When it was revealed to the Holy Prophet, Jabir said to the Holy Prophet:

"We know Allah and the Prophet, but who are those vested with authority whose obedience has been conjoined to that of Allah and the Prophet? The Holy Prophet said: 'They are my caliphs and the Imams of the Muslims after me. The first of them is Ali, ~~who was born~~ then Hasan, then Hussein, then Ali, son of Hussein, then Muhammad son of Ali, who has been mentioned as Al-Baqir in the Torah (Old Testament). O Jabir! You will meet him. When you see him, convey my greetings to him. He will be succeeded by his son Jafar Al-Sadiq, then Moosa son of Jafar, then Ali son of Moosa, then Muhammad son of Ali, then Ali son of Muhammad, then Hasan son of Ali. He

will be followed by his son whose name and patronym will be the same as mine. He will be the Proof of Allah on the earth, and the one spared by Allah to maintain the cause of faith among mankind. He will conquer the whole world from east to west. So long will he remain hidden from the eyes of his followers that the belief in his Imamate will remain only in those hearts which have been tested by Allah for faith."

Jabir said: "O messenger of Allah! Will his followers benefit from his seclusion?" The Holy Prophet said: "Yes, By Him who sent me with prophethood, they will be guided by his light, and benefit from his mastership behind the clouds. O Jabir! This is from the hidden secrets of Allah and the treasured knowledge of Him. So guard it except from the people who deserve to know". (See, Al-Khazzaz, Abul Qasim, Ali Ibn Muhammad Ibn Ali [4th Cent.]: Kifayatul athar, Iran, 1981, p. 53).

34. The Sunnis believe that institution of Imamate/Caliphate is necessary, and it is incumbent on men to appoint a caliph. Some Sunni believe that it is incumbent according to reason, and others within their sect believes it is incumbent according to tradition. Al-Nasafi writes in his Al-Aqa'id:

"The Muslims cannot do without an Imam who shall occupy himself with the enforcing of their decisions, and in implementing their penal code and guarding their frontiers, and equipping their armies, and receiving their alms, and putting down robbers and thieving and highwayman, and maintaining the Friday and Feast Prayers, and removing quarrels that fall between people, and receiving evidence bearing on legal claims, and marrying minors who have no guardians and dividing booty!"
(See Al-Taftezani: sharhul Aqa'idil NeFeeseh, p. 185).

35. Accordingly, the Sunnis recognize four principles for appointing a caliph:

a) Ijma; that is Consensus of men of power and position on a certain point. The agreement of all the followers of the Holy Prophet is not necessary, nor is it essential to secure the consent of all the persons of power and position in the Community.

b) Nomination by the previous Caliph.

c) Shoora; that is selection by a committee.

d) Military power; that is if anyone acquires power by military force he will become a Caliph.

38. All the above mentioned principles are derived, not from the Holy Quran or the traditions of the Holy Prophet, but from the events and happenings after the death of the Holy Prophet. According to the Sunnis, the first four Caliphs are called The Rightly-Guided Caliphs. Now let us examine how The Rightly-Guided Caliphs came into being.

39. The Shi'i believe the Sunnis Islamic Leadership derived from the Saqifah Government. Saqifah means a covered porch. It was a place of gathering for some companions of the Holy Prophet

during the time of his burial. These companions are attributed as the forefathers of the Islamic sect generally called collectively the Sunni Muslims.

38. The Holy Prophet body had not yet been interred. Ali, some members of his tribe or family, and a few companions were busy washing and enshrouding the body in preparation for burial; they, and they alone, were fully preoccupied with the great blow that had descended and the urgent duty they had to perform (See Ibn Kathir, al-Bidayah, Vol. V, p. 260; al-Ya'qubi, al-Tarikh, Vol. II, p. 94; Ahmad b. Hanbal, al-Musnad, Vol. IV, p. 104; al-Tabari, Tarikh, Vol. II, p. 451; Ibn al-Athir, Usd al-Ghabah, Vol. I, p. 34; Ibn Abd Rabbih, al-Iqd al-Farid, Vol. III, p. 6D).

39. At the very same time, a group of the Ansars had convened a meeting at a pavilion nearby known as the Saqifah of the tribe Sa'idah in order to settle the matter of succession to the Holy Prophet in conformity with their own wishes. Umar immediately sent a message to Abu Bakr, who at that time was in the house of the Holy Prophet, telling him to join him immediately. So, Abu Bakr left the house and hurried together with Umar to the meeting place where the Ansars were meeting, being joined on the way by Abu Ubaydah b. al-Jarrah (See al-Tabari, Tarikh, Vol. II, p. 456).

40. Ahmad Amin, a well-known Sunni and Egyptian writer whose stance toward the Shi' is negative to the point of fanaticism, writes as follows:

1/ The companions of the Prophet were at odds over the question of the succession. It was a sign of their unworthiness that they began arguing over it before the Prophet had even been buried. It was only Ali who did not behave in this fashion, busying himself instead with the washing, enshrouding and burial of the Prophet. The foremost among the companions were all intriguing over the succession; they had abandoned the body of the Prophet, and no one was present at the burial save Ali and his family, or showed any respect for the one who had guided them and brought them forth from the darkness of ignorance. They did not even wait for the burial to take place before they started fighting with each other over his legacy" (see *Yawm al-Islam*, quoted in al-Amin's *A'yan al-shi'ah*, [Persian] translation, Vol. I, p. 262).

41. By the time this was over, Abu Bakr had achieved a fait accompli. Ibn Qutaybah writes: "when Abu Bakr had taken the caliphate, Ali was dragged to Abu Bakr.

The Ali was commanded to take the Oath of allegiance to Abu Bakr. Ali said: "I have more rights to the Caliphate than anyone of you. I will not pledge obedience to you. As a matter of fact, you should give the pledge of obedience to me. You called the Ansar to give their Bay'ah on the ground that you had blood relations with the Messenger of Allah. You are uprising the caliphate from us, the members of his house. Did you not reason with the Ansar that you have better rights to the Caliphate than they because the Apostle was of your Kinship, and they handed over the government to you and accepted your leadership? Therefore, the very reason put forth by you before the Ansar is now forwarded by me. Our relations with the Apostle in life as well as in death are much closer than those of anyone of you. If you are faithful to your argument, you have justice; otherwise you know that you have knowingly moved towards tyranny.

42. Umar said: "unless you give Bay'ah, you will not be released. Ali cried, 'Milk out as much as you can for the undders are in your hand. Make it as strong as possible today, for he is going to hand it over to you tomorrow. Umar! I will not yield to your commands, I shall not pledge loyalty to him'. Ultimately Abu Bakr said, 'O Ali! If you do not desire to give your Bay'ah, I am not going

to force you for the same". (Ibn Qutaybah, Abu Muhammad, Abdullah Ibn Muslim ad-Dinawari [213/828-276/889]; al-Imamah wa's-Siyasah, Cairo, 1387/1967; and Beirut, 1401/1981).

43. Despite the historical tension between the Sunni and Shi'i religions, DOCS has officially established the Saqifah or Sunni Sect as the official doctrine of Islam, without absolutely no alternative for Shi'i to practice their group prayer, and has forced the Shi'i to coexist in group prayer with the Sunni sect in full conformity of their tenets at the exclusion of the Shi'i's group prayer tenets.

44. Defendant Fischer has refused to hire Shi'i Chaplains with full rights, authorities and respect as any other muslim chaplain to meet the needs of the Shi'i inmates. Among the forty-nine muslim chaplains hired by DOCS, not one is a Shi'i.

45. Defendant Fischer has entered ~~an~~ into an agreement with a select few Shi'i inmates that permit only them to have Friday group prayer service wherever they are or maybe housed in corrections, defendant Fischer refused to extend such agreement to the Shi'i inmate population in general, and to the

plaintiff in particular.

46. The plaintiff was told by the defendants that it is okay to pray with the sunni muslims hereat Clinton despite it violates his belief a shi'i because he can repeat the prayer again solo if he want. However, group worship in prayer service is an essential part of the right to the free exercise of religion,

47. Sunni Muslims, as part of their prayer, must say the word Amin out loud during the prayer, which is an essential element of their belief. A shi'i cannot, by the tenets of their beliefs, validly offer group prayer with the word Amin being introduced into the prayer. According to the shi'i beliefs, the saying of the word Amin or having that word introduced into the prayer, invalidates the prayer.

48. The plaintiff, a member of the shi'i sect of Islam, believed that he and his fellow shi'is were being deprived of the freedom to practice their religion by defendants Fischer and Perlman, who has established sunni Islam as the official doctrine of Islam, and has denied the shi'i muslims a chance to practice their group prayers at Friday services.

49. Defendant Fischer, who is the Commissioner of the Department of Correctional Services (DOCS), is charged with the responsibility of all program services in local facilities in general; and Clinton in particular, that includes religious services for inmates to practice their respective beliefs. Defendant Perlman, who is the Deputy Commissioner of Program Services for the defendant Fischer, is responsible for making investigations at the request of the defendant Fischer that such practices are in fact afforded to inmates.

50. Both defendants has created a policy that requires a form for religious change be registered for all Shi'is via the local Sunni chaplain. Once an inmate self identify as a Shi'i Muslim, the local Sunni chaplain visit the inmate who requested to be registered as a Shi'i, and pressure the inmate to renounce their request to be registered as a Shi'i or discourage them from such course. If the inmate is not deterred at that point by the local Sunni chaplain, then once the inmate application to be registered as a Shi'i is processed by the local Sunni chaplain the word Shi'i is removed and either the words "Muslim" or "Islam" remains. This deceptive practice effectively hides the fact of how many Shi'is are actually in Clinton. Despite the plaintiff filed a complaint with the defendants to be permitted to hold Shi'i services on Friday separate from the Sunni Muslim, the

plaintiff was told by defendant Perlman, at the specific request of defendant Fischer, that there was not enough Shi'is in Clinton for such need.

51. The Sunni chaplains cannot be entrusted with the religious affairs of the Shi'i inmates for various reasons. A major challenge reported almost unanimously by Shi'i inmates civil rights complaints in federal court is that they encounter widespread discrimination and pressure to renounce their faith by Sunni chaplains. The acrimony between the two groups has often led to physical confrontation within the correctional facilities and to some inmates being placed in isolation. Some have even reported attempts to kill Shi'i inmates by Sunni inmates. Between November 2001 and February 2002, four Shi'is were reportedly attacked by Sunni inmates at the Great Meadow Correctional Facility.

52. The following are excerpts from civil rights cases in federal court from some Shi'i inmates. They are indicative of the sectarian tension within the prison system with Sunni chaplains conducting the affairs of Shi'i inmates.

53. Shahid Abd al-Rahman, another Shi'i inmate states, "I have been in prison for twenty years and for fifteen years as a Shi'i Muslim. It is hard to create a picture for you to see the hell I had to endure so that I may practice my faith. Even now, the Wahhabi (Sunni) chaplains and prison officials are trying to keep me quiet and prevent me from making my brothers and sisters aware of what's going with me." Abd al-Rahman complains he has been advocating the rights of Shi'i inmates.

54. Abd al-Rahman states that he was asked to keep away from Shi'i inmates when he first went to Attica Correctional Facility. Later, he

announced to everyone that he had become a shii. Subsequently, he filed a civil rights complaint under the First and Fourteenth Amendment of the U.S. Constitution arguing that the Department of Correctional Facilities has established sunni Islam as the official doctrine of Islam and denied shii Muslims a chance to practice their faith. Abd al-Rahman's case was filed in the United States District of New York, Western District under Rahman v. Goord, et al., 04-cv-06368 before the Honorable Charles J. Siragusa, District Judge.

55. Abd al-Rahman's case was settled between the parties, and a stipulation agreement was reached concerning shii Friday services. As for the request for a separate Friday Prayer services for shii inmates, DOCS entered into an agreement with Abd al-Rahman, that where ever he may be housed in DOCS he would be permitted to hold Friday services, if the numbers dictate enough participation. Any other shii inmate not involved in the law suit, is required to attend and pray with the sunni Muslims because they could repeat the prayer again solo to discharge their religious duty according to the defendants.

56. Frankie Cancel, another shii inmate, who at Fishkill Correctional Facility complained that the sunni chaplain in the facility did not permit the study of or recognized differences between sects of Islam and routinely labeled shiis as infidels, hypocrites, and Satanic worshipers to shame them into converting to sunni Islam. Due to their conversion, shii inmates loss the brotherhood and fraternity that other muslim inmates enjoyed, especially as they do not and sometimes cannot partake in the religious services offered by the sunni chaplain.

57. In 1999, Cancel, a Hispanic convert to shiism, complained that the sunni chaplain at Fishkill did not permit the study of or recognized sectarian differences and routinely denigrated and insulted the shiis. He filed a grievance with prison officials alleging that the only Islamic

Services provided within the facility were those that were affiliated to sunnism. Cancel filed an Article 78 proceeding challenging the denial of his grievance. He claimed that there were significant differences between shii muslims^{and} the sect that official DOCS' chaplains are associated with, the sunni' muslims. He argued that DOCS' refusal to accommodate the shii's violated its own Directive 4202.

58. Cancel further alleged that the sunni' faith and practices were inconsistent with his own, and that the sunni' imam did not permit the recognition of different Islamic sects. Cancel requested that a shii clergy or registered volunteers be allowed to enter the prison and lead separate shii services and discussion groups.

59. DOCS denied the grievance on the basis that it was "advised by the Department's imam (himself a sunni) that all muslim religious groups fall under Islam," and that "[a]ll practice the same faith and should not be separated, as the grievant suggests." Cancel filed a petition requesting the relief contained in his grievance. The Supreme Court of Dutchess County granted the petition, and DOCS appealed to the Second Department Appellate Division. In affirming the decision of the Supreme Court, the Second Department made specific reference to Correction Law 610, that all prisoners in New York State "have the right to the free exercise of religion without discrimination or preference" and that regulations "shall recognize the right of the inmates to the free exercise of their religious belief, and to worship God according to the dictates of their consciences."

60. Reviewing the proof submitted by the parties, the Court concluded that the differences between shii and sunni practices warranted

the relief requested. It opined that:

the differences between the historical and doctrinal beliefs, as well as the religious practices, of the two groups are significant. The nature of these differences mandates the conclusion that Docs' determination that the spiritual needs of the inmates of shii muslim faith can be met in religious services led by chaplains of the Sunni muslim faith is arbitrary and capricious. (Docs') determination is contrary to the objectives of Docs Directive 4202 and the 1st Amendment right of religious liberty upon which it is based.

61. The Court also took note that Cancel's petition was denied based on the opinion of the imam, the very individual alleged to be guilty of religious discrimination. This did not provide a rational basis for the denial of the grievance. Furthermore, the Court found it "readily apparent" that the petitioner's spiritual needs had not been met, given the significant doctrinal differences between the two muslim sects, and the denial of the grievance was therefore arbitrary and capricious, and in violation of Correction Law 610.

62. Legal Claims

Each defendant is sued individually and in his official capacity. At all times mentioned in this complaint each defendant acted under the color of state law.

63. Plaintiff seeks declaratory relief pursuant to 28 USC Section 2201 and 2202. Plaintiff's claims for injunctive relief are authorized by 28 USC Section 2283 and 2284 and Rule 65 of the Federal Rules of Civil Procedure.

64. The failure to hire shii clergy and to provide shii Friday Prayer Services violated Plaintiff CARL GEE's rights and constituted a violation of the free exercise of religion and equal protection violation under the 1st and 14th Amendment to the United States Constitution.

65. The plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this court grants the declaratory and injunctive relief which plaintiff seeks.

66. Prayer For Relief

WHEREFORE, plaintiff respectfully prays that this court enter judgment granting plaintiffs:

67. A declaration that the acts and omissions described herein violated plaintiff's rights under the Constitution and laws of the United States.

68. A preliminary and permanent injunction ordering defendants Fischer and Perlman to hire shii clergies and to immediately institute shii Friday Prayer Services with the full rights they granted the sunni muslim without further ado.

69. Compensatory damages in the amount of \$100,000,000 against each defendant, jointly and severally.

70. Punitive damages in the amount of \$250,000 against each defendant.

71. A jury trial on all issues triable by jury.

72. Plaintiff's costs in this suit.

73. Any additional relief this court deems just, proper, and equitable.

Dated: 11-22-10

Respectfully submitted,

Carl Gee

CARL GEE 98B1658

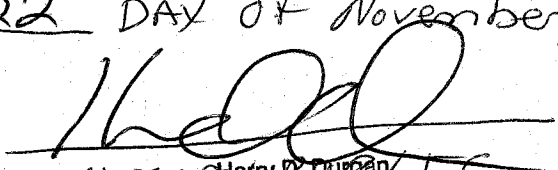
Clinton CF

PO Box 2000

Dannemora, NY 12929

SWORN TO BEFORE ME THIS

22 DAY OF November, 2010


NOTARY PUBLIC
Harry P. Dugan
Notary Public, State of New York
No. 01DU6008379
Qualified in Clinton County
Commission Expires

6/22/14